



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,437	11/12/2003	Victor Paul Holbert	IP-023587	7149

1726 7590 10/16/2006

INTERNATIONAL PAPER COMPANY  
6285 TRI-RIDGE BOULEVARD  
LOVELAND, OH 45140

EXAMINER
----------

PATTERSON, MARC A

ART UNIT	PAPER NUMBER
----------	--------------

1772

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/706,437

Applicant(s)

HOLBERT ET AL.

Examiner

Marc A. Patterson

Art Unit

1772

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: none.  
Claim(s) objected to: none.  
Claim(s) rejected: 1-7 and 9-19.  
Claim(s) withdrawn from consideration: none.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See attached.

## ADVISORY ACTION

### *Acknowledgement of Applicant's Amendments*

1. The amendment in the After Final Amendment filed October 3, 2006 has not been entered because the amendment raises a new issue. Claim 1, prior to amendment, was not directed to a blend 'wherein the relative proportion of polymethylpentene and polypropylene in the physical blend are such that the blend of polymethylpentene and polypropylene exhibits softening and melting points greater than softening and melting points of polypropylene.' The application also did not contain newly submitted Claims 20 – 25. The amendment therefore raises issues which would require further search and consideration to be fully considered, and the amendment has therefore not been entered. Even if the amendment were to be entered, the amended claim would not overcome the prior art of record, because it would have been obvious for one of ordinary skill in the art to have selected a blend having the desired physical properties.

### ANSWERS TO APPLICANTS ARGUMENTS

2. Applicant's arguments regarding the 35 U.S.C. 103(a) rejection of Claims 1 – 3, 6, 9 – 14, 16 and 18 – 19 as being unpatentable over Kiang (U.S. Patent No. 5,370,941), 35 U.S.C. 103(a) rejection of Claim 4 as being unpatentable over Kiang (U.S. Patent No. 5,370,941) in view of Lorence (U.S. Patent No. 5,818,016), 35 U.S.C. 103(a) rejection of Claims 5 and 15 as being unpatentable over Kiang (U.S. Patent No. 5,370,941) in view of Shanton (U.S. Patent No. 6,066,375), 35 U.S.C. 103(a) rejection of Claims 7 and 17 as being unpatentable over Kiang (U.S. Patent No. 5,370,941) in view of Bissot (U.S. Patent No. 4,818,782), and 35 U.S.C. 103(a) rejection of Claim 8 as being unpatentable over Kiang (U.S. Patent No. 5,370,941) in view of

Adur (U.S. Patent No. 5,942,295), of record in the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 7 of the remarks dated October 3, 2006, that Claim 1 has been amended to overcome the prior art of record.

However, as stated above, Claim 1, prior to amendment, was not directed to a blend 'wherein the relative proportion of polymethylpentene and polypropylene in the physical blend are such that the blend of polymethylpentene and polypropylene exhibits softening and melting points greater than softening and melting points of polypropylene.' The application also did not contain newly submitted Claims 20 – 25. The amendment therefore raises issues which would require further search and consideration to be fully considered, and the amendment has therefore not been entered.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Marc Patterson* 10/12/06  
Marc A. Patterson, PhD.  
Primary Examiner  
Art Unit 1772